

CONSERVATION COMMISSION
Minutes of a Meeting – March 2, 2023

The City of Methuen Conservation Commission held a hybrid meeting via in-person and Zoom video conferencing (VC) on March 2, 2023, at 7:00 p.m. in the Searles Building 2nd floor conference room, 41 Pleasant Street, Methuen MA 01844. Present for this meeting were Matt Davidson, Chairman; Ken Sateriale, Secretary; Sandra Boulay, Financial Secretary (arrived 7:05 p.m.); and Commissioners Christopher Parsons, Cara Seaman, Leah Santone, and David DiZazzo. Also present was Conservation Officer (CO) Joseph Giarrusso. Temporary Head Clerk, Dianne A. Dewan, had an excused absence.

The Chairman, Matt Davidson, announced that Pursuant to Chapter 20 of the Acts of 2021, this meeting will be conducted via remote means, in accordance with applicable law. This means that members of the public body as well as members of the public may access the meeting via virtual means. The meeting may be accessed remotely via Zoom video conferencing (VC) by contacting the Conservation Office. When required by law or allowed by the Chair, persons wishing to provide public comment or otherwise participate in the meeting, may do so by in-person attendance, or by accessing the meeting remotely, as noted above. For this meeting, members of the public who wish to listen/watch the meeting may do so in the following manner: To be contacted by phone or by VC, please contact the Commission Office. In the event that access and participation is not achieved, then the Commission will post, on the City of Methuen website, an audio or video recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting. The following are actions, comments, and concerns regarding the information submitted for the Commission's meeting of March 2, 2023.

I. NOTICES OF INTENT:

- A. Abbreviated Notice of Resource Area Delineation – DEP File # 219-1283 – Lowell Boulevard (Map 320, Block 166, Lot 12) – William Ahearn – Cornerstone Land Associates, LLC

As requested in a letter dated February 28, 2023 from Kenneth M. Lania of Cornerstone Land Associates, LLC, a motion was made by Mr. Sateriale; seconded by Mrs. Seaman; so voted, UNANIMOUS to TABLE this hearing to the meeting of March 16, 2023.

- II. CALL TO ORDER:** The Chairman called the regular meeting to order at 7:02p.m.

III. ACCEPTANCE OF AGENDA / AMENDMENTS (IF ANY): Mr. Giarrusso noted that the original agenda was amended to include item C. under Old Business. A motion was made by Mr. Parsons; seconded by Mrs. Seaman; so voted, UNANIMOUS to ACCEPT the Agenda as amended.

- IV. ACCEPTANCE OF MINUTES:** A motion was made by Mr. Sateriale; seconded by Ms. Santone; so voted, UNANIMOUS to APPROVE the minutes of 2/16/2023 as written.

V. NEW BUSINESS:

- A. Request for Determination of Applicability – MCC File # 23-003 – 33 Lindbergh Avenue – City of Methuen

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Mr. Parsons recused himself from item A noted above.

Mr. Giarrusso noted that Stephen Gagnon, Engineering Department Administrator, was to be present via Zoom, but as of this time, is not present. Therefore, Mr. Giarrusso presented the plan for the removal of two (2) existing underground heating oil storage tanks and the installation of an above ground replacement tank system within Bordering Land Subject to Flooding associated with Mystic Pond. Erosion control consisting of straw wattles are proposed to protect the Resource Areas. The proposed work is located in the existing parking lot aside of the DPW garage building. The impacts, as documented in the Requests for Determination, show that the proposed work will result in a negligible loss of flood storage and therefore is not significant.

A motion was made by Mrs. Seaman; seconded by Mr. Sateriale; so voted, UNANIMOUS to ISSUE Negative 2 Determinations with the following special conditions:

1. Work shall conform to the description of work as submitted with Request for Determinations of Applicability on file with Methuen Conservation Commission.
2. A 48-hour written notice shall be given to the Methuen Conservation Commission prior to any activity on site.
3. **Before tank removal may begin**, erosion control as outlined in the Request for Determination shall be installed. Installation of erosion control shall be inspected and approved by the Conservation Commission or its agent.
4. Once the work has been completed in each area, ALL disturbed areas shall be stabilized by the end of each day by either paving or other methods approved by the Commission.
5. All the work shall follow the submitted "Project Narrative" and details. Should soil or ground water contamination be encountered, the Contractor shall contact the Conservation Commission Office. This determination does not cover any required hazardous material cleanup or remediation, which could require the filing of a Notice of Intent.
6. Existing grades shall not be altered as a result of the proposed work.
7. Any changes made or intended to be made to the above referenced plans shall require the owner or his successor in interest to inquire in writing of the Methuen Conservation Commission whether the proposed change is significant to the interests of the Act/Ordinance.
8. Members and agents of the Methuen Conservation Commission shall have the right to enter and inspect the premises to evaluate site conditions for compliance and to require the submittal of any data deemed necessary by the Commission for that evaluation.

Mr. Giarrusso noted that Mrs. Boulay and Mr. Gagnon joined the meeting at 7:05 p.m. Mr. Giarrusso explained to Mr. Gagnon that the Commission had already issued Negative 2 Determinations for his project noted above and the paperwork will be ready on 3/6/23.

Mr. Gagnon stated he lost his internet connection and had to reconnect. He then thanked the Commission for the Determinations.

VI. OLD BUSINESS:

- A. Enforcement – There were none at this time.
- B. Order of Conditions/Bond – DEP File #219-1280 – MCC File # 22-012 – 1 Frost Avenue – Five C Construction, LLC

A motion was made by Mrs. Seaman; seconded by Mr. Sateriale; so voted, UNANIMOUS to ISSUE Orders of Conditions for the above noted project with the following Special Conditions and requiring a performance bond in the amount of \$42,700:

1. **Before ANY activity on the site may begin**, the Contractor, job supervisor, and City Engineer shall meet with the Conservation Officer to review the Order of Conditions, Construction Sequence and timetable for the project. At this time, the contractor shall review any issues with the location of stockpile areas.
2. **Before ANY activity on the site may begin**, erosion control shall be installed at the limit of work as shown on the approved plans. The Conservation Commission or its agent shall inspect it before work may begin.
3. A copy of the foundation certification(s) showing the location of the foundation(s) and **cellar floor and/or top of foundation elevation(s)** shall be submitted to the Commission and approved **before** a final building permit is released. This plan shall be at the same scale as the approved plan and shall include the location of installed erosion control and wetland flags.
4. **Before Occupancy Permit may be issued**, permanent Conservation markers available at the Commission Office shall be installed every 20 feet along the limit of work on the fence posts of the proposed post and rail fence as shown on the approved plan. Once installed, the Commission and/or its agents shall inspect them before permit is released. These markers shall be maintained in perpetuity and **any violation of this condition shall result in fines of not less than \$100.00 per day and requirement of restoration of impacted markers and/or vegetation.**
5. To ensure that each property owner has been properly informed of the existence of the Conservation markers and post and rail fence found on their property and the critical importance that they perform **NO** activity within the Riverfront Restoration area, a notice to this effect shall be included in both the purchase and sales agreement for the property and any deed(s) prepared for the property. A form signed by the buyer(s) acknowledging they understand these restrictions shall be submitted to the Commission **before a final occupancy permit may be issued. This condition shall remain in perpetuity and any violation of this condition shall result in fines of not less than \$100.00 per day.**
6. **Before Occupancy Permit may be issued**, all proposed Riverfront Restoration planting, shall be completed. The Contractor shall submit a biologist report to the Commission on the required restoration once the area is completed. This report shall outline the species makeup, quantity of plants, and shall include calculations on mitigated areas and soil conditions. The Commission and/or its agent shall review and verify compliance. This report shall not replace the required final mitigation report required for Certificate of Compliance. It should be noted that this area

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shall be a natural area in perpetuity and **any violation of this condition shall result in fines of not less than \$100.00 per day and requirement of repair or replacement of impacted markers, fencing and/or restoration of vegetation.**

7. The Five C Construction, LLC/future home owners shall comply with the Long Term Operations and Maintenance Program, dated January 27, 2023 and copies of all inspection/maintenance reports shall be submitted to the Conservation Commission on or before December 30th of each year. Failure to comply with this condition will result in a fine of \$100.00 per day that the property owner is in non-compliance of this condition. **This Condition shall remain in perpetuity.**

8. A dumpster will be used for the construction debris to prevent materials from blowing into the resource area(s) and it shall be covered at the end of each workday.

9. Failure to comply with all the conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury or absolve the petitioner of responsibilities to other property owners or any invasion of private rights, including land to which he discharges water directly or indirectly.

10. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.

11. The work authorized hereunder shall be completed within (3) three years from the date of this Order unless work is a maintenance dredging project as provided for in the Ordinance.

12. This Order may be extended by the issuing authority for one-year periods, each upon application to the issuing authority at least (30) thirty days prior to the expiration date of the Order.

13. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, grass clippings, refrigerators, asphalt products, hazardous waste, motor vehicles or parts of any of the foregoing. At no time shall any debris or other material be buried or disposed of within that line marked on the plan as wetland, other than that fill which is allowed by this Order and is shown in the plan(s) referenced above.

14. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department have been completed.

15. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Methuen Conservation Commission on the form at the end of this Order prior to commencement of the work.

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16. A sign shall be displayed at the site not less than two (2) square feet in size, bearing the words, D.E.P. File # 219-1280 and M.C.C. File No. 22-012. Said sign shall not be nailed to any living tree.

17. The Methuen Conservation Commission shall be notified within ten (10) days of any instance where an individual, association, partnership, trust, or corporation transfers, in whole or part, its title and interest to the land which is the subject of this Order of Conditions, or in the instance where a corporation shall transfer greater than fifty (50) percent of its stock. Such individuals or other entities shall notify the Methuen Conservation Commission of the name, address, and telephone number of the new owner. Such new owners or new controlling interests, in the case of a corporation, shall forthwith also furnish the Methuen Conservation Commission with a notarized statement as called for in condition #26.

18. Within thirty (30) days of completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that work has been satisfactorily completed.

19. No work may proceed until the applicant has received other permits required by law, including but not limited to, any permit required by the Methuen Board of Health, Planning Board, Board of Appeals, D.E.P., MEPA and USCOE.

20. If substantial (1/3 of construction) work has not been completed within one year from the date of issuance, any request for an extension may be denied.

21. Upon completion of this project, any request for a Certificate of Compliance shall be accompanied by, but not limited to, those materials as specified in Section 7 of the Rules and Regulations and Chapter 12. (Section 7 reads "A Certificate of Compliance shall be requested by the applicant/owner in writing and may be issued by the Commission following a site inspection, provided that the request for the Certificate of Compliance must contain with it, an affidavit signed and stamped by a Massachusetts Registered Professional Engineer, Land Surveyor, Architect or Landscape Architect, stating that all work has been completed in accordance with this Order of Conditions and plans submitted. Such request for Certificate of Compliance shall include with it an as-built plan signed and stamped by said individual. The Certificate of Compliance shall be issued on the form marked "B" annexed hereto and shall be valid only when approved by a majority of the Methuen Conservation Commission. If, after a site inspection, the Methuen Conservation Commission determines that the Order of Conditions has not been satisfactorily complied with, the request for certificate may be denied. This decision shall be forwarded to the applicant, along with the reasons for denial within twenty-one (21) days of receipt of the request for a certificate.")

22. Any deviations made or intended to be made from the plans submitted, the Notice of Intent, and this Order of Conditions, shall require the filing of a new Notice of Intent, or to inquire of the Methuen Conservation Commission in writing whether the change is substantial enough to require a new filing.

23. The applicant shall have received written approval of any proposed change(s) from the Methuen Conservation Commission prior to the execution of any change in the field.

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24. The applicant shall file, in conjunction with the Methuen Conservation Commission, all those materials, plans and certifications showing foundation locations that are required by the City of Methuen Building Inspector.

25. A forty-eight (48) hour written notice shall be received by the Methuen Conservation Agent prior to the commencement of any work on the site.

26. Prior to commencement of any work, the person receiving the Order of Conditions shall provide the Methuen Conservation Commission with a signed, notarized statement indicating, at a minimum, that such individual, under pains and penalties of perjury, swears that he understands the terms/conditions as specified in the Order of Conditions and that such person agrees to comply with the provisions of the Methuen Wetlands Ordinance, the regulations and the Order of Conditions.

27. This Order of Conditions shall apply to any successor in interest or in control.

28. If any plan, calculation, or other data presented to the Methuen Conservation Commission is in error or having omissions, and are deemed significant by the Methuen Conservation Commission or their agents, all work will stop at the discretion of the Commission, until the discrepancies have been rectified to the Methuen Conservation Commission's satisfaction.

29. Members of the Methuen Conservation Commission and their agents shall have the right to enter the premises to inspect and evaluate compliance with this Order of Conditions and the Methuen Wetlands Ordinance, and to require the submittal of any data deemed necessary by the Methuen Conservation Commission for that evaluation.

30. A Performance Bond (Form "K") shall be issued by the Methuen Conservation Commission and signed by all parties prior to any alteration of the project site. Said bond shall be in the amount determined by the Methuen Conservation Commission, and said bond shall guarantee and assure performance of the conditions as outlined in this Order of Conditions and plans, diagrams and other data as incorporated therein. A copy of this bond or collateral including the expiration date shall be filed with the Methuen Conservation Office.

31. This document shall be included in all construction contracts and subcontracts dealing with the work proposed and shall supersede other contract requirements, to the extent that a conflict exists between performance requirements of the sections.

32. The Notice of Intent dated 11/30/22, the Riverfront Area Planting Exhibit, dated January 27, 2023, revised February 16, 2023, and the Long Term Operations and Maintenance Program, dated January 27, 2023, shall become a part of this plan.

33. Prior to construction, the applicant shall inform the Methuen Conservation Commission, in writing, of the names, addresses, business and home phone numbers of the project supervisor and his/her alternate.

34. A copy of the plan on record, Order of Conditions, and specific sequence of construction and instructions shall be kept at the work site whenever work is in progress.

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35. Fill used for this project will be clean granular fill containing no organic matter, and containing no more than 20% by volume of objects that are no greater than one-half (1/2) cubic foot and is subject to the approval of the Methuen Conservation Agent.
36. The siltation fence or hay bale line erected to prevent siltation of the wetland shall also serve as the limit of activity for work crews. It shall remain in good repair during all phases of construction and it shall not be removed until all soils are stabilized, revegetated, and until permission to remove is given by the Methuen Conservation Commission. When approved for removal, all stakes and silt fence shall be removed from the site and disposed of lawfully. Hay bales shall either be removed or broken apart and spread out over the upland portion of the site.
37. Erosion and sedimentation controls shall be placed prior to construction activity and inspected by agents of the Methuen Conservation Commission before land disturbing activity may commence. The Methuen Conservation Commission reserves the right to require additional erosion control or storm damage prevention controls as construction progresses. These controls will be maintained, along with other controls deemed necessary by the Methuen Conservation Commission and/or its agent. Hay bales and siltation control barriers shall mark the limit of construction beyond which no equipment, earth or vegetation disturbance may take place.
38. The applicant shall have on hand at the start of any soil disturbance, removal or stockpiling, a minimum amount of hay bales and sufficient stakes for staking the bales. Said bales shall be used only for the control of emergency erosion problems and shall not be used for the normal control of erosion.
39. All stockpiled soil shall be stockpiled and/or protected in such a way as to prevent wind and water erosion. In no case shall any soil be stockpiled within 50' of any wetlands or floodplain.
40. As soon as possible during construction, all disturbed upland areas shall be brought to final finish grade and permanently stabilized (a) according to USDA Soil Conservation Service published guidelines or (b) in another way approved by the Methuen Conservation Commission. Bare ground that cannot be stabilized within thirty (30) days shall be stabilized by temporary measure approved by the Methuen Conservation Commission. A mulch of hay or straw shall be used on newly seeded slopes. The Methuen Conservation Commission may require the mulch to be anchored.
41. All drainage structures and roadways will be built per Methuen Department of Public Works specifications. All drainage facilities, silt ponds, and related structures and equipment shall be continually operated and maintained so as to comply with this Order of Conditions. The operation and maintenance of these facilities and structures shall be in perpetuity by the landowner(s) or through easement by the City of Methuen and shall not expire at the end of one year or with issuance of the Certificate of Compliance.
42. Any dewatering activities on the project in which water will be released to wetlands shall make use of a settling pond or similar device to remove sediment before water is released. Prior to any dewatering activities, the Methuen Conservation Commission and/or its agent shall approve of the location or the settling pond.
43. The storm drainage system, detention basins, compensatory storage areas and/or erosion control devices shall be constructed/installed during the initial phases of the project so that they may be functional during construction.

44. Grading shall be established and maintained so there shall not be direct runoff to the abutting properties.
45. The project shall not be or constructed as to increase runoff in the post-development stages measured against pre-construction to abutting properties and wetland resource areas.
46. Site grading and construction shall be scheduled to avoid periods of high groundwater.
47. During construction, all rubbish shall be confined to a commercial container system. All debris, including but not limited to, stumps, brush waste and debris, from all aspects of this project shall be removed from the site and lawfully disposed of outside of any area subject to protection under Chapter 131, Section 40, Massachusetts General Law, or Chapter 12 of the Municipal Code of Methuen. Records as to the destination of all materials removed from the site shall be kept and made available to the Methuen Conservation Commission upon request.
48. During and after work on this project, there shall be no discharge or spillage of fuel, oil or other pollutants onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident or vandalism.
49. No further filling, dredging or altering of wetland resource areas shall take place other than provided for in this Order of Conditions.
50. Fertilizers utilized for landscaping and lawn care after final stabilization shall be of low nitrogen content variety and shall be used in moderation.
51. Special Condition(s) 4, 5, 6, 7 & 41 shall extend beyond the Certificate of Compliance, in perpetuity and shall be referred to in all future deeds to this property.

C. Certificates of Compliance – DEP File # 219-1130 – MCC File # 12-017 – 615 Prospect Street (Flora Village) – 615B Prospect Street, LLC

Mr. Giarrusso explained that no work ever commenced on this property and the majority of the land was given to the City as a gift. The Certificates are needed to clear the title.

A motion was made by Mr. Parsons; seconded by Mr. Sateriale; so voted, UNANIMOUS to ISSUE Certificates of Compliance with that finding.

VII. CONSERVATION OFFICER'S REPORT: In addition to his original report, Mr. Giarrusso noted the following:

- Hybrid Meeting Status

Mr. Giarrusso noted that a bill has been filed and is before the Massachusetts House of Representatives to extend the timeframe for conducting hybrid meetings for two (2) years until March of 2025. He will keep the Commission updated.

- **Clerk Position Update**

Mr. Giarrusso noted that, with the Mayor being hospitalized, the Acting Mayor cannot hire anyone for a period of sixty (60) days. Should the Mayor return before that time, he can then continue the hiring process.

- **April 20, 2023 meeting**

Mr. Giarrusso noted that he will be away on vacation for the April 20, 2023 meeting and Mrs. Dewan would be unable to set up a Zoom meeting. He suggests that the Commission cancel that meeting and have the applicants of any continued items or any new filings sign a waiver for continuance to the next meeting of May 4, 2023.

The Commission agreed to cancel the April 20, 2023 meeting.

VIII. OTHER BUSINESS:

A. Election of Officers:

1. Chairperson

A motion was made by Mr. Sateriale; seconded by Mr. Parsons; so voted, UNANIMOUS to NOMINATE and ELECT Mr. Davidson to remain in his current position of Chairman, as there were no other nominations.

2. Vice Chairperson

A motion was made by Mr. Davidson; seconded by Mrs. Seaman; so voted, UNANIMOUS to NOMINATE and ELECT Mr. DiZazzo as Vice Chairman, as there were no other nominations.

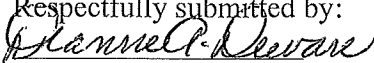
3. Secretary

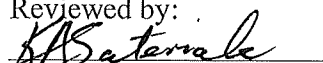
A motion was made by Mrs. Boulay; seconded by Mrs. Seaman; so voted, UNANIMOUS to NOMINATE and ELECT Mr. Sateriale as Secretary, as there were no other nominations.

4. Financial Secretary

A motion was made by Mr. Parsons; seconded by Mr. DiZazzo; so voted, UNANIMOUS to NOMINATE and ELECT Mrs. Seaman as Financial Secretary, as there were no other nominations.

IX. ADJOURN: A motion was made by Mr. Parsons; seconded by Mrs. Boulay; so voted, UNANIMOUS to AJOURN the meeting at 7:16 p.m.

Respectfully submitted by:

Dianne A. Dewan
Temporary Head Clerk

Reviewed by: .

Kenneth Sateriale,
Secretary

Approved on:
3-16-23
Date Approved

